

**CITY OF MOUNTAIN VIEW
MEMORANDUM
POLICE DEPARTMENT**

DATE: December 13, 2004

TO: Kevin Duggan, City Manager

FROM: Scott S. G. Vermeer, Police Chief

SUBJECT: Police Canine Tino Incident – Consultant and FBI Report

On November 19, 2004 I provided you with a detailed report of our internal review of the incident that occurred on September 4, 2004 involving Canine Tino. As noted in my report, we were still awaiting the report of our independent consultant as well as the findings of the FBI.

Late last week I spoke personally with the Assistant Special Agent In Charge of the San Jose office of the FBI. He indicated that the FBI closed their investigation and that no evidence was found by the Department of Justice which constituted a violation of civil rights. This was confirmed by a letter that I have received from Albert Moskowitz, Chief of the Criminal Section of the Civil Rights Division of the United States Department of Justice. In his letter, Chief Moskowitz states, "After careful consideration, we concluded that the evidence does not establish a prosecutable violation of the federal criminal civil rights statutes. Accordingly, we have closed our investigation". I have included a copy of the letter with this memo for your information.

On December 2, 2004 Mr. Don Fasching, an independent canine consultant, began his review of the canine program and determination of Tino's ability to perform effectively as member of the Department's Canine Team. Mr. Fasching has concluded his analysis and he submitted his report to me today. I have attached his report to this memo for your review.

Mr. Fasching's report details the scope of his review, sources of information and the process used for reaching his conclusions. His findings indicate that Tino most likely responded based on the stimuli of the incident and his response was not contained or controlled because there were not appropriate restraints in the police car. The restraints, steel bars between the front seats and rear compartment, would have prevented this incident from occurring. As mentioned in my previous report, the installation of bars was recognized as a critical preventive piece of equipment, and the installation has already been completed. Mr. Fasching's report clearly recommends that Canine Tino should be returned to service.

Shortly after the incident of September 4th, I drafted a letter to our community to present the facts of the case, to outline the steps being taken to research and respond to what took place and to keep our community informed. In my letter I highlighted several of the steps that would be taken, and with the receipt of Mr. Fasching's report and the results of the FBI review, we have now completed all components of our review. The process has included our internal review, the independent consultant review, opening a dialogue on this issue with the NAACP, review of the training procedures of our canine training contractor, cooperating and participating with the FBI in their review, and analysis of departmental policies and procedures.

Based on several factors including Mr. Fasching's report, the results of our internal review, implementation of appropriate vehicular restraint equipment and an analysis of the facts of the case, I believe Canine Tino is able to return to patrol status.

Our Canine Team has been in existence for more than four decades and has a tremendous record of finding countless missing persons, uncovering hidden contraband and locating dangerous criminals. I believe that Tino will continue to perform in a safe and professional manner as a member of the team. He will be back on patrol with his handler on Friday December 17, 2004.

If you have any questions about the incident, review or process, please let me know.

DATE: December 8, 2004

TO: Scott Vermeer, Chief of Police
Mountain View Police Department

FROM: Donald L. Fasching, Consultant

SUBJECT: Police Service Dog Evaluation

INTRODUCTION:

I was retained by City Attorney Michael Martello who requested that I evaluate the Mountain View P.D. Canine Program in light of a recent incident involving the police service dog "Tino." Thereafter, I was contacted by Lieutenant Mick Hamlin who arranged for me to visit the Mountain View P.D. on December 2, 2004, to review the program records. On the same day, I observed the canine team in training and personally administered the P.O.S.T. Canine Performance Test to Tino.

By way of background, I have been in law enforcement for thirty-two years. During that time, I was assigned to the San Diego Police Department Canine Unit and worked a police service dog in the field for seven years. I am a certified P.O.S.T. Canine Evaluator and have over 1,200 hours in canine related training courses.

BACKGROUND:

On September 04, 2004, at approximately 0100 hours, Officer Scott THOMAS and his PSD Tino responded to a call for assistance from a plainclothes detective. The detective, GONZALEZ, ID #G8246, had intervened during a possible domestic violence incident that was occurring on the sidewalk and requested assistance.

Officer THOMAS was the first officer to arrive at the scene. He exited his police car and moved towards the two subjects involved in the altercation. As THOMAS was leaving his police vehicle, GONZALEZ made physical contact with the male subject, Patrick TERRY, and forced him to the ground. The female subject, Sarah HILL, was standing near GONZALEZ and TERRY. HILL was yelling at GONZALEZ and posed a possible threat to the detective.

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THOMAS had directed his attention to HILL and was about to assist GONZALEZ, when TERRY began screaming about being bitten by the PSD. The PSD had exited the police car and engaged TERRY by biting him on the left leg. Officer THOMAS immediately ordered the dog to release. The PSD complied with the command and was returned to the car. Based on the subsequent investigation, it was clear the PSD had reacted without direction from THOMAS and should not have bitten TERRY.

As a result of the September 04, incident, the PSD Tino was removed from field duty and inactivated. Police department administration expressed concerns regarding control issues and recommended an independent evaluation of the dog's performance.

EVALUATION:

On December 02, 2004, I arrived at the Mountain View Police Department and met with Sergeant Keith PLAMONDON. PLAMONDON is assigned to Special Operations and performs a collateral function as Canine Unit Supervisor.

We discussed the Canine Unit in general and the specific events surrounding the dog bite. After meeting with PLAMONDON, I was given access to the unit files and the police department policies on the use of force, General Order 4.1.2., and the Canine Program, General Order 4.3.2.

During the material review, I asked to examine the patrol vehicle used by Officer THOMAS on 09-04-04. THOMAS was driving vehicle #319, a 1996i, Chevrolet. The vehicle had been modified to accommodate the PSD. At the time of the incident, the area between the two front seats was not secured and the dog had access to the front seats. Since the incident, several metal bars had been attached to the compartment divider. The bars were installed to prevent the PSD from accessing the front of the car.

The next part of the evaluation was to observe the PSD and handler perform certain required skills. In 1995, P.O.S.T. (Commission on Police Officer Standards and Training) developed performance guidelines for police service dogs. The guidelines established performance standards for police canine units within the state of California. The P.O.S.T. standards are as follows:

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- OBEDIENCE: The dog must respond to specific commands given by the handler on and off lead.
- PROTECTION: The dog must bite on command; release the bite on command; and not bite, or "call off" on command.
- SEARCHING: The dog must be able to locate someone hiding inside a building and alert the handler as to the person's location. Likewise, the dog must locate a person hiding outside and make an alert.

There are two national police canine associations. The United States Police Canine Association and the North American Police Work Dog Association have also developed performance standards. The national organizations' standards are very similar to the P.O.S.T. standards.

On December 02, 2004, I attended a Canine Unit weekly training session. The training was conducted by Mr. James FAGGIANO. FAGGIANO is a private vendor who is contracted by the City of Mountain View to train the Canine Unit. Present during the session were the three MVPD canine teams and one team from the Los Altos Police Department.

Since the P.O.S.T. Test is the only recognized state standard for canine teams, I requested to see Officer THOMAS and Tino perform all phases of the test. In fairness to THOMAS and his dog, I suggested all four canine teams participate in the test. This afforded me an opportunity to evaluate Tino's performance and compare it to the other teams. Mr. FAGGIANO assisted with testing process and all four teams completed the test.

CONCLUSION:

Before giving my opinion regarding the PSD "Tino", I believe it's necessary to comment on certain animal behaviors associated with a police service dog. Dog behavior and performance are categorized in areas classified as "drives." For example:

- Prey Drive: The desire to pursue or chase and object.
- Play Drive: The desire to play with an object; ball, toy, etc...
- Hunting Drive: The desire to find and object, similar to prey drive.
- Defense Drive: The desire to protect itself from harm.

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Dogs selected for police work should be strong, but balanced in all of the above areas. Through proper training, the drives are stimulated and channeled to achieve a desired behavior. If a dog has weak prey and hunting drive it will not pursue or search for a dangerous subject. A dog with weak play drive would not be considered for narcotics or explosives detection. A dog with weak defense would not be able to defend itself or the handler from the threat of assault.

During training, police dogs are placed in scenarios designed to recreate actual "street" situations. Through repetition, the dog learns to recognize events involving their handler and other subjects. For instance, if the handler is attacked, the dog will respond by defending the handler and bite the attacker. If the handler exits the car and chases another person, the dog will assist the handler and pursue the subject being chased. Generally, the dog will respond to a situation based on the level of its training. However, the dog is only an animal and on occasion will react to stimuli outside the handler's understanding. It is impossible to predict a dog's behavior 100% of the time.

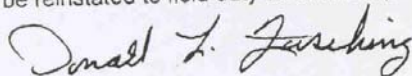
The incident that occurred on 09-04-04 placed the PSD in a "handler protection" situation. Officer THOMAS drove quickly to the scene and activated his lights and siren. Upon his arrival, THOMAS moved rapidly from the police car to assist the detective. All of these actions heightened the dog's awareness and clearly increased its drive. The PSD is trained to exit the car, defend the handler and, if necessary, bite a suspect.

After departmental review, it was determined that Officer THOMAS was not negligent and the dog responded to the incident based the cumulative stimuli similar to what the animal receives in training. To prevent a similar situation from occurring, all MVPD canine vehicles have had the seat divider modified to prevent the dog from exiting between the seats. In reviewing the Department's canine program, I found no similar problematic past behavior on the part of PSD Tino.

During the training session on 12-03-04, I observed Officer THOMAS and Tino perform all phases of the P.O.S.T. Test. The team successfully completed each phase. The dog demonstrated a satisfactory understanding of each required skill and performed at a higher level or the same level as the other teams.

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Based on my review of department policy, Canine Unit administrative files, Canine Unit training files and observations during a department training session, I believe the Police Service Dog Tino performs at a level that meets state and national standards. The unintentional bite resulted from equipment failure and had very little to do with the dog's ability to perform in the future. It is my professional opinion that the Police Service Dog Tino is not a liability and should be reinstated to field duty as soon as possible.



Donald L. Fasching, Consultant



U.S. Department of Justice
Civil Rights Division

ANM: rcd
DJ 144-11-1971

*Criminal Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530*

December 3, 2004

Chief Scott Vermeer
Mountain View Police Department
1000 Villa Street
Mountain View, CA 94041

Dear Chief Vermeer:

The Criminal Section of the Civil Rights Division enforces the federal criminal civil rights laws, such as the willful abuse of authority by public officials that deprives individuals of liberties and rights defined in the United States Constitution or federal law. We evaluate allegations of civil rights violations to determine whether the evidence and circumstances of the case warrant a federal criminal prosecution.

We received a complaint that Unknown of your agency may have been involved in violating the civil rights of Patrick Terry. We recently completed our review of the results of the investigation of that complaint to determine whether a federal criminal prosecution was warranted. After careful consideration, we concluded that the evidence does not establish a prosecutable violation of the federal criminal civil rights statutes. Accordingly, we have closed our investigation. Please be advised that our conclusion in this matter does not preclude other components of the U.S. Department of Justice from taking action, where appropriate, under their separate enforcement authority.

This Division is dedicated to the enforcement of federal criminal civil rights statutes. We appreciate your cooperation in our shared responsibility to ensure the impartial and effective enforcement of our laws.

Sincerely,

Albert N. Moskowitz
Chief
Criminal Section